

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of a Petition by Northern States
Power Company d/b/a Xcel Energy for
Approval of the Renewable Development Fund
Annual Report, Tracker Account True-up, and
2005 Rate Rider Factor

ISSUE DATE: June 28, 2005

DOCKET NO. E-002/M-05-109

ORDER SETTING RIDER, APPROVING
CONTRACT AMENDMENTS AND
PROCESS FOR FUTURE AMENDMENTS,
AND REQUIRING CONTINUED
REPORTING

PROCEDURAL HISTORY

On January 11, 2005, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) asked the Commission to approve its annual Renewable Development Fund (RDF) report, tracker account true-up and 2005 rate rider factor, and enclosed a draft notice to advise customers of these proposed changes. Xcel revised its request on January 18.

On February 10, 2005, the Minnesota Department of Commerce (the Department) filed comments raising both computational and policy concerns with Xcel's request, and asking the Commission to bar Xcel from recovering from ratepayers costs related to six RDF contracts that Xcel had amended without securing Commission approval.

On March 9, 2005, Xcel replied to the Department's comments. Xcel accepted the Department's computational corrections but opposed its policy arguments against its cost recovery. Xcel asked the Commission to approve the contract amendments and declared that it was withholding further payments to the project developers at issue pending resolution of the case.

The matter came before the Commission on April 21, 2005.

FINDINGS AND CONCLUSIONS

I. Background

A. Renewable Development Fund Statutes

As a condition of storing spent nuclear fuel in dry casks at its Prairie Island nuclear power plant, Xcel must finance a fund to develop renewable energy resources. Minn. Stat. § 116C.779. The fund's resources may not be expended without Commission approval. Xcel may recover the net

cost of Commission-approved expenditures automatically through an adjustable surcharge on the rates it charges for electricity. Minn. Stat. § 216B.1645, subd. 2. This automatic cost recovery mechanism would bypass the lengthier rate case mechanism wherein rates are set based on a consideration of all of a utility's costs and revenues.

B. Relevant Implementation

In 2000 Xcel proposed to establish a renewable development fund, initiating the *RDF Docket*.¹

On April 3, 2002, the Commission approved the selection of the first cycle of RDF projects, including a budget for each project.² In the following months, the Commission approved specific contracts between Xcel and six project developers:

- AnAerobics, Inc. (contract AB07);
- D.H. Blattner and Sons, Inc. (contract BW06);
- Energy Performance Systems, Inc. (contract BB06);
- Global Energy Concepts, LLC (contract CW02);
- Sebesta Blomberg & Associates, Inc. (contract BB03); and
- the University of North Dakota Energy & Environmental Research Center (contract BB09).

These contracts provided for reimbursing specified costs incurred by specified dates.

On December 23, 2002, the Commission authorized Xcel to begin recovering costs related to the RDF projects using an automatic cost recovery mechanism that Xcel uses for fuel costs (the “fuel clause adjustment”) on the condition that Xcel make annual compliance reports accounting for project costs and revenues.³

In 2003 Xcel made payments to each of the above-noted developers beyond the periods authorized in the Commission-approved contracts. Xcel subsequently cancelled the AnAerobics project and, in a separate docket,⁴ Xcel disclosed this fact. When the Department asked the Commission to block Xcel's recovery of costs related to that project, the Commission determined that this issue should be addressed in the context of the *RDF Docket*.⁵

¹ *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Renewable Development Fund Oversight Process*, Docket No. E-002/M-00-1583 (*RDF Docket*).

² *RDF Docket*, Order Approving Selected RDF Projects and Requiring Filing on Process Improvements.

³ *RDF Docket*, Order Varying Rules to Permit Recovery of Renewable Development Fund Expenditures and Requiring Compliance Filing.

⁴ *In the Matter of the Review of the 2003 Annual Automatic Adjustment of Charges for All Gas and Electric Utilities*, Docket No. E,G-999/AA-03-1264.

⁵ *Id.*, Notice (April 7, 2004).

On June 11, 2004, the Commission issued an Order changing how Xcel recovers its RDF costs.⁶ The Order –

- authorized Xcel to recover approved RDF costs through a separate surcharge, or “rider,” on utility services, rather than through the fuel clause adjustment mechanism,
- established an account to track the revenues generated by the rider and RDF expenses paid,
- established a mechanism to adjust, or “true-up,” the amount of the rider to compensate for any under- or over-collection of funds expended on RDF projects,
- directed Xcel to work with the Commission's Consumer Affairs Office to develop a customer notice explaining these changes, and
- invited the Department to study whether Xcel should pay interest into this tracker account when ratepayer contributions into the account exceed RDF costs, and whether Xcel should earn interest when costs exceed revenues.

On July 14, 2004, and January 31, 2005, Xcel took the initiative to file RDF “status reports.”⁷ The reports noted amendments to contracts between Xcel and four RDF developers -- Global Energy Concepts, LLC; Sebesta Blomberg & Associates, Inc.; the University of North Dakota Energy & Environmental Research Center; and AnAerobics, Inc. -- and suggested “guidelines for dealing with grant contract amendments.”

On July 15, 2004, the Department responded to the Commission’s Order of June 11, 2004, by recommending that the RDF tracker account not incur or accrue interest.⁸

On August 17, 2004, the Commission decided to defer consideration of the Department’s recommendation to bar Xcel’s recovery of the AnAerobics costs pending efforts to find a new use for the project’s assets.⁹

On January 11, 2005, Xcel made its RDF compliance report and asked to adjust the rider factor to recover approved RDF expenditures pursuant to the June 11, 2004 Order. That filing triggered the current docket.

⁶ *In the Matter of the Petition of Xcel Energy for Approval to Separate Renewable Development Fund Cost Recovery from the Fuel Clause Adjustment, Establish a Renewable Development Fund Rate Rider, and Establish Deferred Accounting Treatment*, Docket No. E-002/M-03-2018 (*RDF Rider Docket*), Order Changing Inter-Jurisdictional Cost Allocations, Establishing Rate Rider, and Removing Renewable Development Fund Expenses from the Fuel Clause (June 11, 2004).

⁷ See *RDF Docket*.

⁸ See *RDF Rider Docket*, Department compliance filing.

⁹ *RDF Docket*, Order Deferring Decision, Allowing Time to Develop Alternative Uses, and Requiring Consultation and Report (August 17, 2004).

II. Tracker Account, Rate Rider and Customer Notice

A. Positions of the Parties

In its initial filing, Xcel calculated the known and anticipated costs of the current cycle of RDF projects, the known and anticipated rider revenues, and the rider necessary to recover the anticipated balance of the account tracking these costs and revenues. Xcel also included a draft customer notice explaining the proposed change to the rider, and offered to work with the Commission's Consumer Affairs Office to refine the notice.

The Department identified computational errors in Xcel's calculations which Xcel acknowledged and corrected in its reply. The parties now agree that these calculations support changing the RDF rider from 0.000415 per kilowatt-hour (kWh) to \$0.000134 per kWh.

But the Department raised concerns beyond computational errors. These concerns lead the Department to recommend immediately removing funds related to six RDF projects from the tracker account. This remedy would have the effect of withdrawing Xcel's authority to recover these funds from ratepayers, resulting in a lower RDF rider.

The Department acknowledges that the Commission approved contracts with the six project developers in question, and authorized Xcel to recover the cost of those contracts from ratepayers. But the Department argues that Xcel subsequently altered the deadlines in the contracts without securing Commission approval or Commission authorization for cost-recovery. Consequently the Department argues that the contracts for which Xcel seeks recovery differ from the contracts for which the Commission authorized recovery, and that Xcel lacks authority to recover the costs of the current contracts.

Xcel raises three arguments in response. First, Xcel notes that the Commission has previously concluded that it would address the prudence of the AnAerobics project in the *RDF Docket*, and that it is therefore inappropriate to address that matter here.

Second, Xcel argues that the contracts approved by the Commission provide Xcel with the discretion to alter deadlines.

Third, Xcel argues that it acted prudently in extending the contract dates. Xcel notes that, with the exception of the AnAerobics project, the projects in question have been implemented successfully and that Xcel's agreement to grant the contractors additional time produced no additional costs. Xcel argues that seeking Commission approval for a schedule change is often pointless; the process of securing Commission approval would often take longer than the delay being sought, and contractors would have to decide how to proceed in the meantime. If the Commission is dissatisfied with how Xcel has administered these contracts, Xcel asks the Commission to provide greater guidance regarding when Xcel should seek Commission approval in the future.

B. Commission Action

The Commission will decline the Department's request to bar recovery of RDF costs related to the projects in question at this time, and will approve an RDF rider of \$0.000134 per kWh.

As Xcel correctly notes, the Commission has decided to address the AnAerobics project in the context of the *RDF Docket*. Whatever further action is warranted pertaining to that project can better be addressed in that docket.

The Commission must now address whether to permit Xcel to recover from ratepayers the cost of the other five RDF contracts that Xcel purported to amend without securing Commission authorization. In setting rates, the Commission seeks to insulate ratepayers from the consequences of a utility's imprudent acts. As the U.S. Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.... The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, *under efficient and economical management*, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.¹⁰

Thus a utility is not entitled to recover its costs; rather, it is entitled to recover costs that an efficient and economically-managed utility would incur under similar circumstances. Arguments to disallow recovery rest on a comparison between a utility's actual conduct and the conduct of a hypothetical efficient and economically-managed utility.

Here the Department alleges that Xcel paid five RDF contractors beyond the period authorized by contract, and identifies the cost of those payments. But the Department fails to identify what costs an efficient and economically-managed utility would have incurred under these circumstances. It strains credulity to suggest, as the Department's position implies, that a utility should have been able to achieve all the benefits of the five projects without incurring any costs at all.

The best evidence before the Commission suggests that if an efficient and economically-managed utility in Xcel's circumstances had asked the Commission to extend the five contracts in question prior to making the payments, the Commission would have granted those extensions. The utility would not have avoided any costs as a result. Consequently, whatever the shortcomings of Xcel's conduct, the record does not support the conclusion that ratepayer interests have been jeopardized. The Commission simply cannot identify any harm.

Having reviewed the calculations of the tracker account balance and proposed RDF rider, including costs related to the five contracts in question, the Commission finds the calculations reasonable. Consequently the Commission will approve the rider, direct Xcel to file conforming tariffs, and accept Xcel's offer to work with the Commission's Consumer Affairs Office in finalizing the customer notice explaining these changes.

¹⁰ *Bloomfield Waterworks & Improvement Co. v. Public Serv. Comm'n of W. Virginia*, 262 U.S. 679, 692-93, 43 S. Ct. 675, 679 (1923) (emphasis added).

III. Past Contract Amendments

A. Positions of the Parties

As noted above, on July 14, 2004, and January 31, 2005, Xcel filed status reports including purported amendments to four RDF contracts extending various deadlines. And on March 9, 2005, Xcel asked the Commission to approve the amendments (setting aside consideration of the AnAerobics contract). The Department did not comment directly on whether the Commission should ratify these contract amendments. But, as noted above, the Department argues that Xcel's authority to recover RDF costs is limited to the authority granted in the Commission's orders approving RDF contracts, and that Xcel lacks the authority to recover costs incurred beyond the terms of those Commission-approved contracts.

In response to the Department's position, Xcel reports that it has withheld such payments from project developers pending resolution of this issue.

B. Commission Action

The Department's comments are focused on cost recovery, not amendment ratification *per se*. The cost recovery issue is now resolved.

Xcel agreed to amend the contracts of four projects. With the exception of the AnAerobics project, these projects appear to have been implemented successfully, and there is no evidence that the change in project timelines had any harmful consequence. Consequently the Commission sees no reason to deny Xcel's request. Finding the amendments reasonable, the Commission will ratify them and direct Xcel to resume making appropriate project payments for the affected projects as of the date of the Commission's meeting.

IV. Future Contract Amendments

A. Positions of the Parties

In the July 14, 2004, and January 31, 2005, status reports, Xcel not only described its amendments to RDF contracts, but also proposed processes for addressing different types of contract changes for this first cycle of RDF projects.

Xcel identifies three types of changes, each warranting a different type of regulatory response. Type 1 amendments would include changes in the language but not the meaning of a contract, such as changes to correct typographical errors or clarify the meaning of a term. Xcel would document such amendments to identify the change and demonstrate that the parties agreed to it, and would note such amendments in its quarterly status reports. But Xcel would not seek Commission approval.

Type 2 amendments would involve minor changes to a contract's meaning. This might include changing a schedule to accommodate circumstances beyond the parties' control, the need to re-order or re-ship equipment to correct for contracting errors, delayed routine status reports, or minor changes in the scope of work, for example. Xcel would seek to implement these amendments through the contract's amendment process and would note them in quarterly status reports, but Xcel would not seek Commission approval.

Type 3 amendments would include more material changes. Xcel would seek Commission approval for such amendments.

The Department argues that Xcel's proposed framework, with its distinction between "minor" and "material" amendments, is too vague to provide meaningful guidance. The Department recommends that the Commission simply reaffirm that Xcel bears the burden to demonstrate the reasonableness of its actions, whatever they may be.

B. Commission Action

The Commission finds merit in both parties' comments. The process laid out by Xcel reflects a reasonable effort to articulate the types of amendments that are likely to produce changes that may affect the public interest, warranting Commission review. Admittedly, Xcel will need to exercise judgment to apply the process in specific circumstances. But because Xcel ultimately bears the burden to demonstrate the reasonableness of its actions, this process does not require Xcel to exercise any greater or lesser judgment than in the past.

The Commission finds Xcel's regulatory framework for amending the current cycle of RDF contracts reasonable and will approve it.

V. Tracker Account Interest Charges

A. Positions of the Parties

In its Order of June 11, 2003, the Commission asked the Department to study whether Xcel should pay interest into this tracker account when revenues from ratepayers exceed RDF costs, producing a positive balance, and whether Xcel should earn interest when the costs exceed revenues, producing a negative balance.

In its compliance filing of July 15, 2004, the Department recommended against the idea. The tracker balance reflects the revenues generated by the RDF rider minus the expenses of the RDF projects. The rider, in turn, is calculated by dividing the cost of the RDF projects, including forecasted costs, by the amount of kWh that Xcel sells, including forecasted sales. Given the degree of imprecision in the forecasts, the Department states that the tracker account will always carry a balance, but there is no reason to expect that balance to be large, consistently positive or negative, or long-lasting. Consequently the Department concludes that interest payments would add needless complexity to the RDF calculations.

No other party spoke to this issue.

B. Commission Action

The Commission appreciates the Department's reasoned analysis, and finds it persuasive. Little purpose would be served to require Xcel to calculate interest payments when those payments would likely be small and offset each other over time. For the reasons set forth by the Department, the Commission will decline to require interest charges to apply to the RDF tracker account at this time. If the account develops a larger balance with a predominant bias, positive or negative, the Commission may revisit the issue.

VI. Reporting

When the Commission initially authorized Xcel to recover RDF costs through the fuel clause adjustment mechanism, the Commission directed Xcel to make the following reports:

2. By September 1 of each year, the Company shall report for each renewable development fund project –
 - the total amount of money awarded from the fund for the project,
 - a schedule of anticipated payments,
 - the amount disbursed,
 - the amounts recovered in the fuel clause,
 - the amounts remaining to be recovered,
 - any adjustments to these amounts due to, for example, penalties or incentive payments provided for in the terms of the proposal; and
 - any disparities between the schedule of anticipated payments and actual payments.
3. In addition, by September 1 of each year the Company shall report –
 - the total liability the Company has incurred under Minnesota Statutes § 116C.779,
 - the Company's aggregate payments for approved renewable development projects,
 - the total fund recovery through the fuel clause adjustment mechanism, and
 - the unencumbered balance remaining in the fund to be awarded to future renewable development projects.¹¹

Subsequently the Commission directed Xcel to recover authorized RDF costs through a separate mechanism created specifically for that purpose,¹² but neglected to specify that the reporting should continue. The Commission will now clarify that Xcel should continue providing the information specified above, but in the context of its annual tracker account and true-up filings.¹³

The Commission will so order.

¹¹ *RDF Docket*, Order Varying Rules to Permit Recovery of Renewable Development Fund Expenditures and Requiring Compliance Filing (December 23, 2002), pp. 5-6.

¹² *RDF Rider Docket*, Order Changing Inter-Jurisdictional Cost Allocations, Establishing Rate Rider, and Removing Renewable Development Fund Expenses from the Fuel Clause (June 11, 2004).

¹³ Given the change in context, Xcel should provide the relevant information by October 1 rather than September 1, for example, and should report costs recovered through the RDF rider as well as the fuel clause adjustment mechanism.

ORDER

1. The Renewable Development Fund rate adjustment rider of Northern States Power Company d/b/a Xcel Energy shall be changed from 0.000415 per kWh to \$0.000134 per kWh effective the first month after approval is granted. Xcel shall file the appropriate updated tariff sheets within 30 days of the Order in this matter, and shall work with the Commission's Consumer Affairs Office to finalize the language on the RDF rider to be included on customers' bills.
2. Setting aside consideration of the AnAerobics project, the contract amendments filed as part of Xcel's July 14, 2004, and January 31, 2005, status reports in the *RDF Docket* are approved. Xcel shall resume making appropriate project payments for these projects, effective April 21, 2005.
3. Xcel's process for amending the current round of RDF projects, including the filing of quarterly status reports, is approved as proposed in the July 14, 2004, and January 31, 2005, RDF status reports filed in the *RDF Docket*.
4. Interest charges shall not apply to Xcel's RDF tracker account.
5. Xcel shall include the RDF annual reporting requirements from the *RDF Docket's* ORDER VARYING RULES TO PERMIT RECOVERY OF RENEWABLE DEVELOPMENT FUND EXPENDITURES AND REQUIRING COMPLIANCE FILING (December 23, 2002) as part of its annual tracker account and true-up filing.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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